IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE TWENTY SIXTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

and
THE HON'BLE MR JUSTICE P.LAKSHMANA REDDY

WRIT APPEAL NO : 1841 of 1999

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated in NO : OF on the file of the High Court.)

Between:

Govt. of A.P. and another

..... APPELLANTS

AND

T.Ghanashyam and another

.....RESPONDENTS

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

and

THE HON'BLE MR JUSTICE P.LAKSHMANA REDDY

WRIT APPEAL NO : 1841 of 1999

JUDGMENT: (Per the Honourable Smt. Justice T.Meena Kumari)

Aggrieved by the order of the learned single Judge dated 03.11.1997 in W.P.No.6524 of 1997 in allowing the said Writ Petition, the present writ appeal has been filed by the respondents 1 and 2 in the writ petition.

For the sake of convenience, the parties will be referred to as arrayed in W.P.No.6524 of 1997 i.e. the appellants herein as respondents and the respondent herein as petitioner.

While admitting the Writ Petition, by an order dated 13.10.1996

the learned single Judge observed that if the counter is not filed by the Government within two weeks from that date, it is deemed that the G.O.Ms.No.504, GAD, dated 30.07.1980 is applicable to the employees working in aided institutions also and the case of the petitioner has to be considered for appointment and even then the respondents therein did not move in the matter. In those circumstances, the writ petitioner therein filed Contempt Case No.1268 of 1997.

The record shows that the W.P.No.6524 of 1997 and Contempt Case No.1268 of 1997 were clubbed together and the learned single Judge has passed common order.

The facts that led for filing of Writ Petition are that the writ petitioner's father who worked as Attender in Arts and Science College for Women, Andhra Mahila Sabha, Hyderabad
(third respondent in the writ petition and who is not made as party in the Writ Appeal) sought retirement on the ground of medical invalidation on 21.03.1996 and three months thereafter he died on 22.06.1996. At the time of retirement on medical invalidation of petitioner's father, an application was submitted on behalf of the writ petitioner for appointment as Attender on 24.01.1996 on par with the children of the employees working in the Government educational institutions who retires on medical grounds and the said request was rejected by the Government on 03.07.1996 on the ground that the benefits provided under G.O.Ms.No.504, General Administration (Services-A), dated 30.07.1980 are applicable only to the children of the employees working in the government educational institutions and they can not be extended to the staff working under the private educational institutions.

It has been contended by the learned counsel appearing on behalf of the respondents/appellants that the benefits provided under G.O.Ms.No.504, General Administration (Services-A), dated 30.07.1980 cannot be extended to the children of the employees

working in the private aided institutions and in the absence of such benefit, the writ petitioner cannot claim the appointment as a matter of right. It is further contended that there is no dispute that the father of the writ petitioner died after his retirement on medical invalidation and therefore it cannot be considered as a death in harness.

The learned counsel for the writ petitioner contended that the impugned order passed by the learned single Judge needs no interference by this Court and ultimately sought for dismissal of the writ appeal.

We have perused the entire material on record. A reading of the impugned judgment of the learned single Judge shows that a Contempt Case No.1268 of 1997 was filed by the writ petitioner against the respondents-government for disobeying the order dated 07.04.1997 in WPMP No.7788 of 1997 in W.P.NO.6524 of 1997 passed by the learned single Judge and the government filed counter stating that the case of the petitioner was considered as a special case and proposals were sent to the Government for his appointment and the same is pending with the government and in those circumstances the learned single Judge by order dated 17.09.1997 directed the government to take a decision and place the same before the Court within two weeks from the date of the receipt of a copy of that order and when the matter came up for hearing on 30.09.1997 the learned Government Pleader produced the orders passed by the government whereunder the government has rejected the request of the writ petitioner for his appointment on '*compassionate grounds'* on the ground that if such benefit is extended to the employees working in the private aided institutions as the appointments have to be made institution-wise, then the possibility of sufficient number of vacancies arising is very remote as the government felt it desirable not to extend the said benefit to those employees. However, the learned single Judge taking a different view has observed that the case of the writ petitioner deserves consideration also on the ground that the writ petitioner's father who has taken retirement on medical invalidation died within three months

after retirement and hence his death has to be considered as a death in harness and therefore the writ petitioner is entitled to get appointment on compassionate grounds.

A reading of the G.O.Ms.No.504, General Administration (Services-A), dated 30.07.1980 shows that the scheme of compassionate appointment introduced in the said G.O. be extended to the spouse/daughter/son of a government servant who retired on medical invalidation and the said benefit cannot be extended to the private aided colleges and therefore, we are of the considered view that the writ petitioner is not entitled to seek a direction for appointment on compassionate grounds. That being so, the finding of the learned single Judge to the effect that ***'the case of the petitioner deserves consideration also on the ground that the petitioner's father who has taken retirement on medical invalidation died within three months after retirement. Hence his death has to be considered as a death in harness. In the light of that, if such a view is taken, the petitioner is entitled to get appointment on compassionate grounds as the same is very much available even for the staff working in private educational institutions'*** cannot be sustained in view of the fact that G.O.Ms.No.504 GAD, dated 30.07.1980 is extended only to the government institutions but not to the private aided colleges and hence the impugned judgment of the learned single judge is liable to be set aside.

Under the above circumstances, the Writ Appeal is allowed.

However, we make it clear that the application dated 24.01.1996 of the writ petitioner may be considered by the appellants herein for any post, if he is otherwise eligible, if they so desire, without being influenced by any of the observations made either by the learned single Judge or by this Court and also by keeping aside the said G.O.Ms.No.504 GAD, dated 30.07.1980. There shall be no order as to costs.

T.Meena Kumari,J

P.Lakshmana Reddy,J

Dated:26.07.2005,

CCM/MHN